

Police Bias

New Cases on Allegations of Police Bias

Police officers' tight focus on following trail of shooters disproved an allegation of bias against young Black males.¹ *Comm. v. Robinson-Van Rader*, 492 Mass. 1 (2023): At 7:39 p.m. in April 2018, ShotSpotter reported gunfire at the basketball court near Annunciation Road. Within a minute, a 911 caller reported about eight shots had been fired and a second person, calling from a few blocks away, reported having heard about six shots. She described seeing two Black males wearing black “hoodies” riding bicycles along Prentiss Street before turning south on Tremont Street. She reported seeing police approaching and, in the background of her call, sirens were audible.

A swift and coordinated Boston Police response followed. Officer O’Loughlin, working a detail about one-half mile south of the intersection of Prentiss and Tremont Streets reported by radio that he saw two Black males in black tops pedaling bicycles along the Southwest Corridor Park bike path toward Heath Street.

Members of the Youth Violence Strike Force — Officers Franklin, Eunis, and Degrave on patrol in an unmarked SUV — heard the detail officer’s broadcast and drove north on Columbus Avenue parallel to the bike path. They had the dispatcher’s description of two males (though a race had been given by the caller, it had not been dispatched) in black hoodies on bicycles, and Officer O’Loughlin’s report of two Black males wearing black on bicycles heading south. There were no descriptions of age, height, weight, build, hairstyle, or facial features.

Near Southwest Corridor Park the officers saw two young Black males wearing hoodies walking south on Columbia Avenue. They were the only ones officers saw in hoodies. These males kept looking back over their shoulders, although nobody appeared to be following. The officers made a U-turn and pulled up beside Michael Robinson-Van Rader and J.H. (a juvenile). Two officers got out. Officer Degrave said, “Hold up a second.” The males complied.

Although the officers did not observe signs of a hidden firearm, Officer Degrave asked J.H. whether he had anything on him. The juvenile turned sideways in reaction, shielding his right hip from the officer. A frisk of J.H. produced a firearm in his waistband. Officer Eunis, watching Robinson-Van Rader, noted that he was sweating, kept his right hand in his sweatshirt pocket, and still checked back over his shoulder. When Officer Degrave found a gun, Officer Eunis grabbed Robinson-Van Rader, pulled him to the ground for handcuffing, and frisked him. A pistol was in his pocket. The arrests occurred no more than seven minutes after the initial call and about eight-tenths of a mile from where shots were fired.

¹ Bias-based policing is referred to as “selective enforcement” by the SJC.

- **Reasonable suspicion analysis.** The description of two Black males wearing hoodies could apply to many persons. At the time they were stopped, these suspects were not even riding bicycles as the shooters had been. However, other factors created reasonable suspicion.
 - *Nervousness.* When seen by the officers, Robinson-Van Rader and J.H. exhibited nervous behavior. They repeatedly looked back over their shoulders (which was towards police headquarters) even though nobody was following them.²
 - *Proximity and time.* The two males were stopped minutes after the crime in a location and direction of travel consistent with what officers expected.³
 - *Serious crime.* Shots fired in a dense urban environment posed a danger to the community and presented an ongoing risk to public safety.
- **Biased enforcement analysis.** Under the equal protection clause of the Fourteenth Amendment, even when police take an action justified by reasonable suspicion or probable cause, the police still violate civil rights if a protected characteristic, such as race, motivated the police. While *Comm. v. Long*, 485 Mass. 711 (2020) applied to motor vehicle stops, the SJC said the same framework should apply to pedestrian stops. The standard remedy for biased enforcement is the suppression of evidence.

In pretrial hearings, the evidence presented allowed the judge to draw an inference that race was a factor in the stop of Robinson-Van Rader. Mary Fowler, a professor of mathematics at Worcester State University, analyzed the traffic stops and field interrogation and observation (FIO) reports of Officers Eunis and Degrove between January 2017 through August 2018. Census data for the patrol area they worked in showed that fifty-one percent of the residents were Black. Of the 276 discretionary stops made by the officers during that time period, ninety percent were Black, while only two percent were “White, non-Hispanic.” Fowler testified that Black persons were five times more likely to be stopped than other races. This was statistically significant, she said, and the chance of this happening randomly — that is, not based upon race — was less than one in 100,000. She testified that the stops were consistent with racial profiling.

The prosecutor ultimately disproved that race was a factor in the stop of Robinson-Van Rader. The officers had race-neutral reasons to stop him:

- The second 911 caller described the suspects as Black males on bicycles.
- The detail officer saw Black males on bicycles wearing black hooded sweatshirts, heading towards Heath Street along the path of flight described by witnesses.
- The arresting officers saw Robinson-Van Rader and the juvenile shortly after, consistent in time and direction with the two persons seen fleeing earlier.

2 The SJC noted that the nervousness displayed by young Black males here was different from that discussed in *Comm. v. Evelyn*, 485 Mass. 691 (2020). While members of certain “targeted” groups may have a reason to avoid police contacts separate from their consciousness of guilt, Robinson-Van Rader and the juvenile were acting in a nervous fashion *before* they knew police officers were watching them.

3 These facts differed from *Comm. v. Warren*, 475 Mass. 530 (2016), where the stop was 25 minutes after the crime and one mile away.

- **The prosecutor may rely on the same facts to explain why a police officer stopped the defendant and why he was not motivated by bias.**
- **The *Long* case posed very different facts.** As the SJC reported the facts in *Long*, officers saw a Black male drive through an intersection. They checked the registration and learned the vehicle was uninspected. The officers stopped Edward Long, as permitted by the civil infraction, and learned he had a suspended driver's license and unlicensed gun.

The defense expert testified the data was consistent with racial profiling by these Boston officers. The prosecutor failed to rebut this allegation, so the SJC inferred a race-based motivation for the stop.

The SJC's point is that a motor vehicle stop by officers based on a civil infraction is the type of discretionary decision that may be influenced (even unconsciously) by the race of the operator. In contrast, stopping suspects within minutes of a shots-fired call based on witness descriptions is less likely to be the result of bias.

- **In the context of police investigations such as pedestrian stops, the evaluation may consider:** (1) patterns of enforcement actions by the particular officer; (2) the events preceding the investigation, i.e., the reasons the officer decided to target the defendant; (3) the seriousness of the crime being investigated; and (4) whether the defendant's race or ethnicity, or membership in another protected class, was part of a description of the suspect.

The fact that a Black defendant was arrested by White officers is an insufficient reason to allege bias. *Comm. v. Cuffee*, 492 Mass. 25 (2023): Springfield Detectives Longo and Podgurski responded to a ShotSpotter report of multiple gunshots on Grand Street. One block from the shots' location they saw a man running away from Grand Street. His right hand was pinned to his right side while his left arm swung freely.

Based on training and their proximity to the shooting scene, detectives believed the man was carrying an unholstered handgun that, based further on training and experience, meant he probably lacked an LTC. The man, Kieson Cuffee, saw the unmarked car, slowed to a walk, pulled up his hood, and stepped into a convenience store. Viewing this behavior as suspicious, the detectives parked and entered the store.

Separating inside, they moved down different aisles. Detective Longo quickly found Cuffee, now wearing a white shirt. After identifying himself, the detective ordered Cuffee to show his hands, but Cuffee turned his body away, shielding his right side. Detective Longo grabbed Cuffee's right arm and a brief, violent struggle started before the detective saw Cuffee had a gun on his right hip. Detective Longo forcefully shoved Cuffee into a metal rack, warning that Cuffee had a gun and unholstering his own pistol.

Detective Podgurski approached from a different angle, took cover, and radioed for backup. Cuffee ran from the store, bloodied from an injury to his face, with the detectives in pursuit. They captured him at gunpoint a short distance away. He no longer had the weapon.

A search of the store revealed a .380 cal. Sig Sauer pistol on a shelf, a black hooded sweatshirt, and Cuffee's cell phone. The four live rounds in the pistol were stamped "Auto Blazer." At the scene where the shots were fired, officers found three .380 shell casings marked "Auto Blazer."

Cuffee's attorney sought in discovery all of the police reports and field interrogation and observation reports (FIOs) involving Detectives Longo or Podgurski starting one year before Cuffee's arrest until one year after Cuffee's arrest.

While a defendant has the right to get discovery, a motion to get enhanced discovery for years' worth of reports and FIOs must be supported by an affidavit signed by a person with personal knowledge of the factual basis for the motion. The attorney's affidavit recited only the facts reported by the detectives and that Cuffee is Black and detectives are White. Under *Comm. v. Long* and *Comm. v. Van Rader*, Cuffee's membership in a protected class is, by itself, not enough.

Officer's testimony that he did not know driver's race showed the stop was not motivated by bias. *Comm. v. Stroman*, 103 Mass. App. Ct. 122 (2023): At 2:00 a.m., New Bedford Officer Amaro witnessed an Audi traveling on River Street and noticed that the number plate was not illuminated. He briefly followed the car before stopping it. His cruiser headlights illuminated the registration, which Officer Amaro checked through his mobile computer. The response showed the vehicle owner had an outstanding warrant for carjacking. The owner's license photograph showed he was African-American.

Prior to stopping the car, Officer Amaro could see there were two occupants, but could not tell their race.

Officer Amaro approached the Audi, asked the driver for a license, and learned the operator was the owner. The officer returned to his cruiser to confirm the warrant. By the time Officer Amaro returned to the driver to have him exit for arrest, backup officers were arriving. As the officer frisked Evans Stroman, he found a handgun in his waistband.

A defendant may challenge a motor vehicle stop or pedestrian stop by presenting evidence supporting an inference that the stop was racially motivated.

- **Stroman's attorney presented this evidence:**
 - Since joining the New Bedford Police Department two years before the stop, Officer Amaro had issued 66 citations of which 26% were to Black motorists;⁴
 - Of the ten citations the officer issued for plate-light violations, four were to black drivers;
 - Census data showed the Black population of New Bedford is 7%;
 - Fourteen years before the stop, the New Bedford Police Department issued a directive for addressing gun violence that encouraged rigorous use of tactics including motor vehicle stops, particularly during the hours of 10:00 p.m. and 5:00 a.m. The directive also said that stops must be legally justified, that the tactics were not intended to violate civil rights, and warned these efforts might be perceived as discriminatory.

⁴ This defendant obtained this data from New Bedford Police through a motion for pretrial discovery.

- **The prosecutor met his obligation to rebut the inference by proving a race-neutral reason for the stop.** Officer Amaro testified he could not see and did not know the racial characteristics of the Audi's occupants until after he stopped the car. Only after the stop did he check the registration and learn that the owner was Black. The judge believed the officer's testimony.

Although the defendant presented statistical evidence — the racial pattern of Officer Amaro's history of citations and the census data for New Bedford — the Commonwealth was not required to rebut the statistical evidence. The prosecutor may meet his burden without rebutting statistics offered in a particular case.

As for the police department enforcement directive, it encouraged officers to stop any driver for any infraction regardless of race. If it had been shown that Officer Amaro aimed his intensive enforcement efforts at neighborhoods where most residents were people of color, a discriminatory inference might be drawn. Those facts were not presented in this case.

The unlit plate was a minor offense, but the test is not whether a reasonable officer would have made a traffic stop for the offense in that location at 2:00 a.m. in late November. The issue was Officer Amaro's true motivation for the stop. Because the judge believed the officer when he testified he did not know the driver's race before the stop, the officer was not engaging in racial profiling.

- **Officer Amaro also testified that he identified as Hispanic, and he was offended by the assertion that his actions were motivated by race.** An officer's race or ethnicity has no bearing on his credibility. It is only speculation that a Hispanic officer would be less likely to discriminate against a Black, or even a Hispanic,⁵ driver.

Though the Commonwealth prevailed against the motion to suppress,⁶ the Appeals Court cautioned that testimony from an officer that he or she did not know the race of the defendant prior to making the stop is only the beginning. The judge must assess the officer's credibility and determine, considering the factors that raised a reasonable inference of racial motivation to begin with, whether the stop was truly made without knowledge or consideration of race.

- **The order of events is key given the common police practice of running the plate before the stop.** Officers correctly want a heads-up on a car before a stop, but when that information often comes with clues about the driver's race, the order of events will not support race-neutrality. Suggestion: Make the stop decision, radio an intent to stop, and then run the check.

⁵ The Appeals Court noted that "Hispanic" itself is a category that may be broken down into subclasses that are not identical, such as Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.

⁶ The motion was to suppress the evidence of the handgun found on Stroman when he was arrested. He was indicted as an armed career criminal under 269, § 10G(c).